Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFPH:CHI:1:POSTF-101729-02
JMCascino

date: January 23, 2002

to: [redacted]
Team Manager, LMSB:[redacted]

from: Area Counsel
(Retailers, Food, Pharmaceuticals & Health Care)

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subject: [redacted] **("Taxpayer")**
TIN [redacted]
Taxable Years [redacted], [redacted] **and** [redacted]
Loss On Redemption of Preferred Stock - [redacted]
Request for Advisory Opinion

This memorandum responds to your written request for advice which we received on November 16, 2001. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us.

This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice. This memorandum should not be cited as precedent. We have coordinated this matter with Consolidated Returns Industry Counsel Lawrence L. Davidow and informally discussed this matter with national office Attorney Theresa A. Abell.

ISSUES

1. Under the facts as set forth below, whether the Taxpayer's claimed short-term capital loss on the redemption of the preferred stock of [redacted] ("[redacted]")in the amount of $[redacted] for taxable year [redacted] should be disallowed under Treasury Regulation § 1.1502-20.

2. Under the facts as set forth below, whether the Taxpayer's claimed short-term capital loss on the redemption of the preferred stock of [redacted] in the amount of $[redacted] for taxable year [redacted] should be disallowed on some other theory.

3. Assuming that the Taxpayer was entitled to deduct a capital loss on the redemption of the preferred stock of [redacted] in the amount of $[redacted] for taxable year [redacted], whether the

Taxpayer properly reported all of said loss as a short-term, rather than as a long-term capital loss.[1]

CONCLUSION

1. Under the facts as set forth below, the Taxpayer's claimed capital loss on the redemption of the preferred stock of [redacted] should not be disallowed under Treasury Regulation § 1.1502-20.

2. If you were able to develop additional facts as discussed below, you may be able to apply the step transaction doctrine to treat the [redacted] sale, purported [redacted] Section 351 transaction and [redacted] redemption as a [redacted] sale. Such recharacterization would have the effect of shifting all or part of the Taxpayer's [redacted] capital loss to the [redacted] taxable year and reducing the stepped up basis received by [redacted]. Because such a recharacterization would appear to have little tax effect on the Taxpayer, pursuit of this issue would only make sense if you believe that you can develop facts along the lines discussed below and are willing to open an audit of [redacted] ("[redacted]") with respect to the transactions at issue.

3. Assuming that the Taxpayer was entitled to deduct a capital loss on the redemption of the preferred stock of [redacted] in the amount of $[redacted] for taxable year [redacted], to the extent that [redacted] ("[redacted]") exchanged capital assets or assets defined in Section 1231(b) for the [redacted] preferred stock, the Taxpayer's holding period of the preferred stock included the holding period of these assets. To the extent the holding period of all or portion of the preferred stock exceeded one year, all or a portion of the capital loss should have been reported as long-term capital loss. However, since you have indicated that the Taxpayer reported an overall net long-term capital gain in the amount of $[redacted], you may decide that recharactization of all or a portion of the Taxpayer's capital loss as long-term should not be made because of a lack of tax effect.

FACTS

[redacted] was incorporated under Delaware

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[1] Although you did not formally request our advice with respect to issues 2. and 3, our review of the facts indicated that these issues should be addressed.

law in [redacted] and is the common parent of the Taxpayer. The Taxpayer filed consolidated U.S. Corporation Income Tax Returns (Forms 1120) for the taxable years [redacted] through [redacted]. You are currently auditing the Forms 1120 of the Taxpayer for the taxable years [redacted], [redacted] and [redacted].

The Taxpayer is engaged in the [redacted] development, manufacture, and distribution of a diversified line of products, systems, and services used and consumed primarily in the [redacted] field. Products are manufactured by the Taxpayer in [redacted] countries and sold in approximately [redacted] countries. The Taxpayer's more than [redacted] products are used principally by [redacted]. The Taxpayer also distributes and manufactures a wide range of products for research and development facilities and manufacturing facilities. In [redacted], the Taxpayer's operations were broken down into five business units, namely, [redacted], [redacted], [redacted], [redacted], [redacted].

Prior to and during [redacted], [redacted] was a wholly owned consolidated subsidiary of the Taxpayer. [redacted] operated the Taxpayer's [redacted]-products manufacturing businesses through various divisions. Regarding its [redacted]-products businesses, in the Taxpayer's [redacted] Form 10K, the Taxpayer reported:

[redacted]

In the Taxpayer's [redacted] Annual Report to Stockholders, the Taxpayer reported:

[redacted]

In the Taxpayer's Form 10-Q for the quarterly period ended June 30, [redacted], the Taxpayer reported:

[redacted]

[redacted]:

- [redacted].

In the Taxpayer's Form 10-Q for the quarterly period ended September 30, [redacted], the Taxpayer reported

[redacted]

Although the Taxpayer's Form 10-Q states that the Taxpayer had entered into a definitive agreement to "sell" its [redacted] manufacturing businesses to [redacted], the transfer of [redacted]'s assets to [redacted] did not take the form of an outright sale. Rather, the divestiture of [redacted] was accomplished through a complicated series of transactions.

On [redacted][2], [redacted] sold assets of certain operating divisions to [redacted] or an affiliate of [redacted]. [redacted] and its affiliates are unrelated to the Taxpayer. The assets sold were the assets of the following divisions: "[redacted]" Net Assets; "[redacted]" Net Assets; "[redacted]" Net Assets; "[redacted]"; and "[redacted]". These assets were sold for $[redacted] and carried a basis of $[redacted]. On the Taxpayer's [redacted] consolidated return, the Taxpayer reported a Section 1231 gain (long term capital gain) in the amount of $[redacted] ($[redacted] - $[redacted]) resulting from this sale.[3]

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[2] Although your Request For Advice merely states that this sale took place in [redacted], [redacted] orally informed us that the actual date of sale was [redacted].

[3] Your request for advice states that the assets were sold for $[redacted] and the gain on sale was $[redacted]. Subsequently, [redacted] orally informed us that the assets were sold for $[redacted] and the gain on sale was $[redacted].

On [redacted][4], [redacted] also transferred assets and liabilities of [redacted] business divisions, plus stock in certain foreign [redacted] business subsidiaries, having a total adjusted basis of $[redacted] to [redacted] in exchange for [redacted] shares of non-voting preferred stock having a face value of $[redacted], and cash of $[redacted]. Simultaneous to this transfer, [redacted] and its affiliates transferred cash of approximately $[redacted] to [redacted] in return for the common stock of [redacted]. Immediately after the transfer, [redacted] and its affiliates owned [redacted]% of the common stock of [redacted] and [redacted] owned [redacted]% of non-voting preferred stock of [redacted]. On the Taxpayer's [redacted] consolidated return, the Taxpayer reported the transfer of [redacted]'s assets to [redacted] as a Section 351 exchange and, accordingly, reported no gain or loss on the transaction except that the Taxpayer reported a Section 1231 gain (long- term capital gain) to the extent of the cash received in the amount of $[redacted].

On [redacted], [redacted] was liquidated into its parent, [redacted] ("[redacted]"), a higher tier subsidiary of [redacted]. [redacted] received the remaining assets of [redacted] including the [redacted] preferred stock and the stock of [redacted]. Pursuant to Section 332, the Taxpayer reported no gain or loss from the liquidation of [redacted] into [redacted] on its [redacted] consolidated return. [redacted] had incurred net operating losses in prior years while affiliated with the Taxpayer.

On [redacted], [redacted] redeemed [redacted] of the [redacted] shares of its preferred stock held by [redacted] for $[redacted] a share or a total of $[redacted]. On the Taxpayer's [redacted] return, the Taxpayer reported a short-term capital loss on this redemption in the amount of $[redacted] computed as follows:

Amount Realized on Redemption of [redacted] Stock ([redacted] Shares X $[redacted]/Share)	$[redacted]
Less Adjusted Basis in [redacted] Stock:	
Basis in [redacted] Stock ($[redacted] X [redacted]%)	$[redacted][5]

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[4] Although your Request For Advice merely states that this purported Section 351 exchange took place in [redacted], [redacted] orally informed us that the actual date of the purported Section 351 exchange was [redacted].

[5] The Taxpayer computed [redacted]'s basis in the [redacted] stock pursuant to Sections 358 and 332. Assuming [redacted] received the [redacted] stock in a Section 351 exchange, pursuant to Section 358, [redacted]'s

Divestiture Costs
($[redacted] X [redacted]%)
Rollover Adjustments [redacted]-[redacted] [redacted]

Adjusted Basis in [redacted] Stock $[redacted]

Capital Loss Reported
on Redemption of [redacted] Stock ($[redacted])

Although the Taxpayer reported a short-term capital loss on the redemption of [redacted] stock in the amount of ($[redacted]) for the taxable year [redacted], [redacted] orally indicated that the Taxpayer reported an overall net long-term capital gain in the approximate amount of $[redacted] for the taxable year [redacted]. [redacted] also orally indicated that [redacted] still owns the remaining [redacted] shares of [redacted] stock.

In response to Information Document Request ("IDR") 302, Question A., the Taxpayer has stated that the structure of the transactions at issue was insisted upon by [redacted] and that [redacted] had negotiating leverage because the Taxpayer had represented to its shareholders that the Taxpayer would divest its [redacted] business by the end of [redacted]. (See [redacted] Annual Report and SEC filings quoted above) Because the Taxpayer reported a gain on the sale of assets in [redacted] and did not recognize a loss until [redacted], the Taxpayer argues that the structure insisted upon by [redacted] did not provide a tax benefit to the Taxpayer.

Although the foregoing [redacted] transactions were reviewed by the Examination Team in the prior cycle, no adjustments were proposed with respect to the reporting of these transactions by the Taxpayer on its [redacted] consolidated return. You have requested our opinion as to whether the $[redacted] capital loss claimed on the Taxpayer's [redacted] consolidated return should be disallowed under Treasury Regulation § 1.1502-20.

You have expressed a concern that, through the purported Section 351 transaction, [redacted] has received a basis in [redacted]'s former assets of $[redacted] even thought [redacted] paid at most about $[redacted] for said assets. However, you have

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basis in the [redacted] stock received was equal to the $[redacted] basis of the assets exchanged by [redacted] for the [redacted] stock. Pursuant to Section 332, [redacted] received a carryover basis of $[redacted] in the [redacted] stock which it received upon the liquidation of [redacted] into [redacted]. Since only [redacted] of [redacted]'s [redacted] shares of [redacted] were redeemed, [redacted]'s basis in the redeemed [redacted] stock is $[redacted] ($[redacted] x [redacted]%).

indicated that neither [redacted], [redacted] or [redacted]'s affiliates are under audit with respect to the transactions at issue herein.

DISCUSSION

1. Treasury Regulation § 1.1502-20(a) provides in pertinent part

(a) Loss disallowance--(1) General rule. No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary...

(2) Disposition. "Disposition" means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules--(i) In general.* Loss with respect to the stock of a subsidiary may be deferred or disallowed under other applicable provisions of the Code and regulations, including section 267(f). Paragraph (a)(1) of this section does not apply to loss that is disallowed under any other provision. If loss is deferred under any other provision, paragraph (a)(1) of this section applies when the loss is taken into account. However, if an overriding event described in paragraph (a)(3)(ii) of this section occurs before the deferred loss is taken into account, paragraph (a)(1) of this section applies to the loss immediately before the event occurs even though the loss may not be taken into account until a later time. Any loss not disallowed under paragraph (a)(1) of this section is subject to disallowance or deferral under other applicable provisions of the Code and regulations.

(ii) Overriding events. For purposes of paragraph (a)(3)(i) of this section, the following are overriding events:

(A) The stock ceases to be owned by a member of the consolidated group.

(B) The stock is canceled or redeemed (regardless of whether it is retired or held as treasury stock).

(C) The stock is treated as disposed of under §1.1502-19(c)(1)(ii)(B) or (c)(1)(iii).

(4) *Netting.* Paragraph (a)(1) of this section does not apply to loss with respect to the disposition of stock of a subsidiary, to the extent that, as a consequence of the same plan or arrangement, gain is taken into account by members with respect to stock of the same subsidiary having the same material terms. If the gain to which this paragraph (a)(4) applies is less than the amount of the loss with respect to the disposition of the subsidiary's stock, the gain is applied to offset loss with respect to each share disposed of as a consequence of the same plan or arrangement in proportion to the amount of the loss deduction that would have been disallowed under paragraph (a)(1) of this section with respect to such share before the application of this paragraph (a)(4). If the same item of gain could be taken into account more than once in limiting the application of paragraphs (a)(1) and (b)(1) of this section, the item is taken into account only once.

The regulations next provide six examples to illustrate the principles of Treasury Regulation § 1.1502-20(a). Each of the examples involves a sale of the stock of a subsidiary which had been included in a consolidated group of corporations prior to the sale.

Treasury Regulation § 1.1502-20(b)(2) defines the term "Deconsolidation" as any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

Treasury Regulation 1.1502-20(e) provides in pertinent part

(e) *Anti-avoidance rules--(1) General rule.* The rules of § 1.1502-20 must be applied in a manner that is consistent with and reasonably carries out their purposes. If a taxpayer acts with a view to avoid the effect of the rules of this section, adjustments must be made as necessary to carry out their purposes.

(2) Anti-stuffing rule--(i) Application. This paragraph (e)(2) applies if-

(A) A transfer of any asset (including stock and securities) on or after March 9, 1990 is followed within 2 years by a direct or indirect disposition or a deconsolidation of stock, and

(B) The transfer is with a view to avoiding, directly

or indirectly, in whole or in part-

(1) The disallowance of loss on the disposition or the basis reduction on the deconsolidation of stock of a subsidiary, or

(2) The recognition of unrealized gain following the transfer.

A disposition or deconsolidation after the 2-year period described in this paragraph (e)(2)(i) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition or deconsolidation within the 2-year period for purposes of this section.

(ii) Basis reduction. If this paragraph (e)(2) applies, the basis of the stock is reduced, immediately before the disposition or deconsolidation, to cause the disallowance of loss, the reduction of basis, or the recognition of gain, otherwise avoided by reason of the transfer.

In your request for advice, you recognize that the Taxpayer sold the assets rather than the stock of [redacted]. Nevertheless, you state that you believe that the transaction was structured to avoid the loss disallowance rules of Treasury Regulation § 1.1502-20. You argue that if [redacted] had sold the stock of [redacted], the loss would have been disallowed. In your view, the transactions were structured to allow [redacted] to claim a large loss and for [redacted] to obtain assets at a stepped up basis for a payment considerably smaller than the basis of such assets. Accordingly, you are considering taking the position that the transactions at issue were in substance a sale of [redacted] stock and that the capital loss at issue should be disallowed under Treasury Regulation § 1.1502-20.

We agree with your view that the transactions at issue were structured to enable [redacted] to obtain assets at a stepped up basis for a payment considerably smaller than the basis of such assets. However, for reasons discussed below, the Taxpayer's claimed loss on the redemption of [redacted] stock can not properly be disallowed under Treasury Regulation § 1.1502-20(a) or Treasury Regulation § 1.1502-20(e).

By its terms Treasury Regulation § 1.1502-20(a) applies to disallow any loss recognized by a member with respect to the disposition of stock of a subsidiary. By its terms Treasury Regulation § 1.1502-20(e)(2) applies to disallow a loss only if there has been a direct or indirect disposition or a

deconsolidation of stock from a consolidated group. As mentioned by the Taxpayer in response to IDR 302, Question B, the Taxpayer's claimed capital loss on the redemption of [redacted] stock can not be disallowed under Treasury Regulation § 1.1502-20 because [redacted] was not a consolidated subsidiary of [redacted]. Because [redacted] was not a consolidated subsidiary of [redacted], the consolidated return regulations including Treasury Regulation § 1.1502-20, are not applicable in determining the amount of recognizable gain or loss upon [redacted]'s disposition of [redacted] stock. In addition, since the liquidation of [redacted] stock into [redacted] did not involve an event in which gain or loss is recognized or an event which causes a share of [redacted] stock that remains outstanding to be no longer owned by a member of any consolidated group of which [redacted] is also a member, such liquidation did not involve a disposition of [redacted] stock within the meaning of Treasury Regulation § 1.1502-20(a)(2) or a deconsolidation of [redacted] stock within the meaning of Treasury Regulation § 1.1502-20(b)(2).

We believe our view is supported by the fact that the Taxpayer could have received the same result without the liquidation of [redacted] into [redacted]. If the liquidation of [redacted] into [redacted] had not occurred, [redacted] still could have redeemed the [redacted] stock directly from [redacted] and the Taxpayer's consolidated group would have claimed the same loss on the redemption of the [redacted] stock for the taxable year [redacted]. We also do not believe the fact that [redacted] sustained net operating losses in prior years renders the transactions at issue, in substance, a sale of [redacted] stock. Accordingly, we do not agree that the transactions at issue were in substance a sale of [redacted] stock and we recommend that the Taxpayer's claimed loss on the redemption of [redacted] stock should not be disallowed under the provisions of Treasury Regulation 1.1502-20(a) or Treasury Regulation 1.1502-20(e).[6]

2. As we indicated above, we agree with your conclusion that the transactions at issue were structured to enable [redacted] and [redacted] to obtain assets at a stepped up basis for a payment considerably smaller than the basis of such assets. This step up in basis was accomplished by having [redacted] sell its low basis assets for cash and transferring the high basis assets in a Section 351

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[6] We note that our advice on this issue is consistent with the opinion of Consolidated Return Technical Advisor Jeffrey M. Brenner. [redacted] has orally indicated that Mr. Brenner had previously reviewed the transactions at issue and opined that the Taxpayer's claimed capital loss on the redemption of the [redacted] preferred stock should not be disallowed under Treasury Regulation § 1.1502-20 because there had not been a disposition or deconsolidation of the stock of a subsidiary of the Taxpayer.

transfer. Because [redacted]% of [redacted]'s interest in [redacted] was redeemed one year later, the net result resembles a sale of assets by [redacted] to [redacted] and [redacted]. Accordingly, one potential issue is whether the purported Section 351 transfer was in substance a sale.

In our view, the transaction on its face appears to meet the requirements of Section 351, because [redacted] and [redacted] transferred assets to [redacted] in exchange for stock and were in control of [redacted] immediately after the transfer. In order to show that the purported Section 351 transfer was in substance a sale, you would need to develop additional facts.

In this regard, the fact that the Taxpayer sold assets with a basis of $[redacted] for $[redacted] and in the Section 351 transaction exchanged assets with a basis of $[redacted] for $[redacted] of preferred stock and $[redacted] cash appears suspect. In responses to IDRs, the Taxpayer indicated that the transactions were structured by [redacted]. Although you have indicated that you believe that the Taxpayer and [redacted] were unrelated and acted at arms length, the Taxpayer may have agreed to exchange the assets in the purported Section 351 transaction at less than fair market value because the Taxpayer was receiving more than fair market value for the assets transferred in the sale transaction.[7] If you could show that the value of the assets transferred in the Section 351 transfer exceeded the value of the preferred stock and cash received and the value of the assets transferred in the sale was less than the cash received, you may be able to apply the step transaction doctrine to treat the sale to [redacted], purported Section 351 transaction, and redemption as one sale. If you could show that the redemption of the preferred stock was prearranged, such fact also would be helpful to show that the Section 351 transfer was in substance a sale. If you could show that the preferred stock was in substance debt, such fact would disqualify the transfer of assets from [redacted] to [redacted] as a Section 351 transfer.

Assuming that the total basis and total fair market value of the assets transferred by [redacted] to [redacted] and [redacted], respectively, are as your have represented them, if you were successful in

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[7] While the total price for the assets sold and exchanged may have been negotiated at arms length, the Taxpayer was indifferent to this structuring because the structuring resulted in the same total proceeds received and nearly the same tax effect to the Taxpayer as an outright sale while providing [redacted] a stepped up basis. As the facts indicate, in its [redacted] annual report and [redacted] and [redacted] SEC filings, the Taxpayer referred to its intention to sell its [redacted] businesses.

asserting that the purported Section 351 transfer was in substance a sale, the Taxpayer's claimed capital loss for the taxable year [redacted] would for the most part be disallowed for the taxable year [redacted], but allowed as a capital loss for the taxable year [redacted]. Accordingly, as you appear to recognize in your request for advice, recharacterization of the Section 351 transaction as sale may not result in any net deficiency due from the Taxpayer for the taxable years [redacted] and [redacted].

You have expressed concern that [redacted] may have improperly received a large step up in basis as a result of the purported Section 351 transaction. A successful recharacterization of the [redacted] Section 351 transaction as a sale would deny [redacted] a stepped up basis in the assets transferred pursuant to the Section 351 transaction and potentially result in adjustments to reduce depreciation and/or amortization deductions claimed by [redacted] on assets received in the purported Section 351 transaction and reduce the basis deduction on any sale of the assets. However, you have indicated that neither [redacted] nor [redacted] is under audit with respect to the taxable years at issue or subsequent years. Accordingly, you would need to open an audit of [redacted] in order to make these potential adjustments.

As the foregoing discussion indicates, a successful recharacterization of the purported Section 351 transaction as a sale may have little tax effect on the Taxpayer and development of this issue appears to only make sense if an audit of [redacted] and [redacted] is also undertaken. Accordingly, we would recommend that you consider pursuing recharacterization of the Section 351 transaction as a sale only if you believe you can develop facts along the lines suggested above and are willing to open an audit of [redacted] and [redacted] with respect to these transactions.

3. Section 1223 provides in pertinent part,

> For purposes of this subtitle-
>
> (1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, the property exchanged at the time of such exchange was a capital asset defined in section 1221 or property described in section 1231....

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

As discussed in footnote 5 above, assuming [redacted] received the [redacted] stock in a Section 351 exchange, pursuant to Section 358, [redacted]'s basis in the [redacted] stock received was equal to the $[redacted] basis of the assets exchanged by [redacted] for the [redacted] stock. Pursuant to Section 332, [redacted] received a carryover basis of $[redacted] in the [redacted] stock which it received upon the liquidation of [redacted] into [redacted]. Since [redacted] received the same basis in the [redacted] preferred stock as it had in the transferred assets and [redacted] received a carryover basis in the [redacted] preferred stock which it received upon the liquidation of [redacted] into [redacted], to the extent that [redacted] exchanged capital assets or assets defined in Section 1231(b) for the [redacted] preferred stock, [redacted]'s holding period of the preferred stock included the holding period of these assets. Sections 1223(1) and (2).
To the extent such holding period of all or portion of the preferred stock exceeded one year, all or a portion of the capital loss should have been reported as long-term capital loss. Section 1222(3).

To the extent that [redacted] exchanged assets which were not capital assets as defined in Section 1221 or assets defined in Section 1231(b) for the [redacted] preferred stock, [redacted]'s holding period of the preferred stock would begin the day after the preferred stock was received. Since the preferred stock was received on [redacted] and redeemed on [redacted], to the extent that [redacted] exchanged assets which were not capital assets as defined in Section 1221 or assets defined in Section 1231(b) for the [redacted] preferred stock, all or a portion of the capital loss was correctly reported as short-term capital loss. Section 1222(2).

To the extent that [redacted] exchanged both assets which were and were not capital assets as defined in Section 1221 or assets defined in Section 1231(b) for the [redacted] preferred stock, Revenue Ruling 85-164 provides a method for splitting the holding period of the [redacted] preferred stock based upon the fair market values of the transferred assets. Revenue Ruling 85-164, 1985-2 C.B. 117. The facts appear to indicate that all or a portion of the assets exchanged by [redacted] were capital assets as defined in Section 1221 or assets defined in Section 1231(b) and that the Taxpayer should have reported all or a portion of the capital

loss as a long-term capital loss. However, since you have indicated the Taxpayer reported an overall net long-term capital gain in the amount of $[redacted], recharacterization of the Taxpayer's claimed short-term loss on the redemption of the [redacted] stock as a long-term loss would appear to have no tax effect. Accordingly, you may decide that such recharactization should not be made because of the lack of tax effect.

In accordance with the Chief Counsel Directives Manual, we are submitting this memorandum for review by our National Office and anticipate a response from the National Office in approximately ten days. As you know the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein until such time as we notify you as to whether or not there are any exceptions or modifications to this advice by the National Office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions concerning this matter, please do not hesitate to call Attorney James M. Cascino at (312) 886-9225 ext. [redacted].

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Associate Area Counsel
(Large and Mid-Size Business)

By: _____
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